IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/02/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

SECOND APPEAL NO.1866 OF 1991
AND
C.M.P.NO.17590 OF 1992

Varthaga Sangham,
Tiruppapuliyur
rep. By its Secretary
Chakravarthy ... Appellant

-Vs-

Cuddalore Municipality rep
by its Commissioner
Cuddalore ... Respondents

Second Appeal preferred under Section 100 C.P.C., praying for the relief as stated therein.

For appellant : Mr.K. Chandramouli
Senior Counsel for
Mr.S. Viswanathan

For respondents : Mr.Liaghat Ali

:JUDGMENT
This Second Appeal is preferred against the judgment and decree dated 30.09.1991 made in A.S.No.51 of 1990 by the Court of Additional District Judge,Cuddalore, thereby reversing the judgment and decree dated 14.9.1989 rendered in O.S.No.71 of 1984 by the Court of the Principal Subordinate Judge, Cuddalore.

2. Tracing the history of the above second appeal coming to be preferred by the plaintiff in the suit, it comes to be known that the appellant herein has filed the suit for declaring plaintiff's title to the suit property and permanent injunction restraining the defendant and its officers from interfering with plaintiff's peaceful possession and enjoyment of the suit property.

3. The case of the plaintiff is that the plaintiff is a Varthaga Sangam registered under the Societies Registration Act and this Sangam owns the suit properties, which consist of a water tank and rooms for bathing and toilet rooms; that there is an Electric motor pump set bearing the service connection number originally 7635 then 333 and now 28; that the said electric motor is used for pumping water to the over head tank; that the suit property has been enjoyed by the plaintiff sangam and the same is evidenced by unimpeachable materials like the stone inscription evidencing the donation (Gift) by one T.S. Nachiyappa Chettiar to the plaintiff sangam in the year 1914; that there is yet another inscription by painting noting down the name of the plaintiff in the overhead tank and the service connection for the electric motor stands in the name of the plaintiff and current consumption charges are being paid by the plaintiff.

4. The further case of the plaintiff is that the well from which water is being pumped out was dug several decades back and it is being maintained only by the plaintiff; that there are also water taps on either side of the water tub; that merchants and members of the public in general take water for commercial and other purposes and the suit property is usually called as Thanneer Dharmam; that the water filled up in the water tub was meant for and used by the animals and there are bathrooms meant for merchants and others for taking bath on payment of charges; that the Sangam has been maintaining a watchman for the last several decades on monthly wages; that it has been leasing out the suit property periodically and has been collecting rent from the lessees; that the plaintiff maintains a minutes book containing the minutes pertaining to the suit property and its maintenance; that there are other documents maintained by the sangam; that in the year 1 970, the defendant installed stalls right in front of the water tub which was objected to by the plaintiff by passing a resolution on 18.3 .70 and sending the same to the defendant, which resulted in the defendant removing the obstruction; that the Plaintiff's title to the suit property has been admitted by the defendant himself and there are documents to that effect; that further, the suit property is in the exclusive ownership and enjoyment of the sangam to the knowledge of the defendant and none else including the defendant who have got no right over it and the plaintiff sangam has also acquired title by adverse possession by having been in continuous and exclusive possession for the last 50 years and hence the suit praying for the reliefs extracted supra.

5. On the contrary, the defendant in his written statement besides denying the allegations of the plaint, would submit that the well is in a very damaged condition; that it is evident that water taps are not used for years and absolutely there is no use of the Thanneer Thotti also for years together and the bathroom referred to has also not been used for years together and there is no roof even for the bathroom with no water supply; that it is wrong to say that the Varthagar Sangam is maintaining and has been leasing out the suit property periodically and has been collecting rent from the lessees; that it is totally false to say that the plaintiff's title to the suit property has been admitted by the defendant and there is no such document at all.

6. The defendant would further submit that the allegation that the suit property is in the exclusive ownership and possession of the plaintiff sangam to the knowledge of the defendant is false; that it is false and untenable to contend that the plaintiff sangam has acquired title by adverse possession by being in long and continuous and exclusive possession for the last 50 years; that it is wrong to say that the right of the defendant was lost and extinguished; that there is no question of adverse possession at all and there can be no adverse possession by plaintiff as against the defendant; that the plaintiff has no possession, much less legal possessi on; that the suit property belongs to the Municipality alone; that the overhead tank was also constructed by the Municipality; that even assuming, but not admitting, the plaintiff is in possession, it is not a possession of their own right as is evident from the inscription 'Nachiappa Chettiar Dharmam' and mere performance of any charity cannot clothe a party with any right and that inscription is not at all related to the plaintiff and the plaintiff cannot derive any right or interest; that the plaintiffs have not established that they have derived any right from Nachiappa Chettiar's family and the plaintiff has not paid any tax; that the plaintiff has no manner of right or title and that Nachiappa Chettiar's heirs are necessary parties to the suit and as such the suit is bad for non-joinder of necessary parties and the suit is not maintainable both in law and on facts.

7. On such pleading by parties, the trial court would frame the following issues for determination of the questions involved in the suit:

(1) whether the plaintiff has got title to the suit property?
2) Whether the plaintiff has acquired title by adverse possession?
3) Whether the defendant is estopped from denying the title of the plaintiff?

4) Whether the suit is bad for non-joinder of necessary parties?
5) Whether the suit is not maintainable?
6) To what relief?

8. During trial, two witnesses have been examined on the part of the plaintiff for oral evidence as P.Ws.1 and 2, P.W.1 being one Soundaraja Achari and P.W.2 being one Dhandapani besides marking 69 documents as Exs.A.1 to A.69 for documentary evidence. On the part of the defendants, they too would examine two witnesses as D.Ws.1 and 2 for oral evidence, D.W.1 being one Sriramulu and D.W.2 being one Rangasamy. For documentary evidence, three documents would be marked by the defendants as Exs.B.1 to B.3. Besides these, the Commissioner's report and plan have also been marked as Court documents Exs.C.1 and C.2. The trial Court, in consideration of these materials placed on record and in appreciation of the evidence issue-wise in its own way, had ultimately decreed the suit, testifying the validity of which, the defendant has preferred an appeal in A.S.No.51 of 1990 on the file of the Court of Additional District Judge, Cuddalore and the said appellate Court having traced the facts and circumstances of the case as pleaded before the lower Court has framed the following points for consideration of the first appeal:

1.Whether the plaintiff has got title to the suit property?
2.Whether the plaintiff has acquired title by adverse possession?

3.Whether the plaintiff is entitled to declaration and permanent injunction as prayed for? and
4.To what relief the parties are entitled?

9. Thereupon, the appellate Court having appreciated the evidence, both oral and documentary placed on record before the trial Court as aforementioned, would ultimately reverse the findings of the trial Court thereby allowing the appeal and setting aside the judgment and decree of the Principal Subordinate Judge, Cuddalore. It is only challenging the said decree and judgment delivered by the first appellate Court, the plaintiff in the suit has come forward to prefer the above second appeal on certain grounds as brought forth in the grounds of second appeal and at the time of admission, this Court has framed the following sole substantial question of law for determination of the above second appeal:

"Whether the judgment of the lower appellate Court is vitiated by its failure to apply the correct principles of law?"
10. During arguments, the learned senior counsel appearing on behalf of the appellant would argue to the effect that the appellant is a registered society under the Central Act 21/1860; that the suit has been filed against the Municipality for declaration of the title and injunction restraining them from in any manner interfering with the plaintiff's possession wherein the suit property was in an extent of 21 12 sq.ft. in T.S.No.1514 which was more than one acre i.e. measuring 16.904 sq.ft. and the trial Court decreed the suit but the appellate Court reversed the finding of the trial Court; that the trial Court also appointed a Commission and the Commissioner inspected the suit property and filed his report and plan marked as Exs.C.1 and C.2; that the main question is the adverse possession; that the appellate Court has unnecessarily raked-up the limitation question.

11. The learned senior counsel would also point out that no issue has been framed on the question of limitation nor even a point framed by the appellate Court as found from the judgments of both the Courts below. At this juncture, the learned senior counsel would cite two judgments reported in (1)2003 (2) CTC 635 (BONDAR SINGH AND OTHERS vs. NIHAL SINGH AND OTHERS) and (2) 2003-2-L.W.605 (PALANISAMY GOUNDER & ANOTHER vs. PERIAMMAL).

12. So far as the first judgment cited above is concerned, it is held therein that the scope of powers of the High Court under Section 1 00 CPC is a matter of settled law, which needs no discussion. If the findings of the subordinate Courts, on facts, are contrary to evidence on record and are

perverse, such findings can be set aside by the High Court in appeal under Section 100 CPC. The High Court cannot shut its eyes to perverse findings of courts below".

13. In the second judgment cited above, a learned single Judge of this Court would cite Section 126 of the Transfer of Property Act and

would hold:
"It is permissible for the Court to draw a presumption of acceptance from the conduct of the parties and from the factual materials."

On such arguments, the learned senior counsel for the appellant would pray for the relief extracted supra.

14. In reply, the learned counsel appearing on behalf of the respondent would submit that the claim of the plaintiff is on two grounds; that one Nachiappa Chettiar gifted the suit property to the said Sangam in the year 1914, but the first appellate Court rejected it on ground that the plaintiff's Sangam itself had come into existence in the year 1938 and since there is no document for the alleged gift nor any separate survey number nor are they paying the property tax; that the Municipal Corporation has constructed a hospital, 97 shops over head tank etc. for the public purpose; that even though there is the stone inscription 'Nachiappa Chettiar Dharmam in 1914', it has not been mentioned about the existence of the plaintiff Sangam and the present plaintiff Sangam having been started in the year 1938 and hence the lower appellate Court has safely concluded that the suit is barred by limitation; that all the documents are only from 1969 and hence the plea of adverse possession also was held not established.
15. The learned counsel would also cite a judgment delivered in ARUNACHALA CHETTIAR AND OTHERS vs. MUNICIPAL COUNCIL OF MAYAVARAM reported in Vol.38 MLJ 222 in which a Division Bench of this High Court, way back in the year 1919, has held:
"To constitute adverse possession of a street drain as against a municipality, it must be shown that the enjoyment of the drain as a drain by the municipality was prevented openly and as of right."
It has again been held:
".... The mere fact that the Municipality did not repair the drains or that the plaintiffs have been repairing or looking after the drains cannot prevent the enjoyment by the Municipality of the drains as drains so long as they are carrying off the street rain water and hence no adverse possession has been established".

On such arguments, the learned counsel would seek to dismiss the above second appeal with costs.

16. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the appellant herein has filed the suit before the trial Court for declaration of its title to the suit property and for permanent injunction restraining the defendant Municipality and its Officers from interfering with the plaintiff's peaceful possession and enjoyment of the suit property wherein the suit properties are the water tank and rooms for bathing and toilet, the electric motor and pump-set with the service connection, which is used for pumping water to the over head tank.

17. The plaintiff is a registered Sangam and the case of the plaintiff is that the suit property has been gifted to the plaintiff's Sangam by one T.S.Nachiappa Chettiar in the year 1914 as it comes to be seen from the

stone inscriptions. It would also be claimed by the plaintiff that they are making use of the suit properties fixing the electric motor and paying the electric consumption charges further maintaining the suit properties themselves.

18. This stand would be stiffly denied by the defendants stating that it is a property belonging to the Municipality, which constructed water tank, well etc. Further rebutting the allegations that it is the plaintiff, which is maintaining the structures stating that they have all been made unusable and dilapidated and therefore the plea taken on the part of the plaintiff that it is the plaintiff's Sangam which is making use of the suit property itself is without any basis. The further argument of the respondent/Municipality is that the stone inscription has nothing to do with the plaintiff Sangam since admittedly the inscriptions were of the year 1914 and besides there being no indication of the plaintiff's Sangam, since the Sangam itself came into existence only in the year 1960 as per its Registration Number and therefore the Sangam cannot claim to have had any nexus with the stone inscription. Thirdly, the plea of adverse possession would also be properly met with by the respondent stating that the suit was of the year 1984 and since the Sangam itself has been established in the year 1960, the thirty years of continuous and unobstructed possession and enjoyment required for the proof of adverse possession is lacking and moreover the documents are all of the years later to 1969 and they cannot go to prove 30 years enjoyment and hence the respondent would shatter the case of the plaintiff on such arguments.

19. However, the trial Court, taking into consideration of the oral evidence relating the stone inscriptions to the Sangam, has arrived at the conclusion to decree the suit. But, the first appellate Court, accepting the reasons assigned on the part of the respondents, would arrive at a different conclusion to hold that the plaintiff has failed to establish its case before the trial Court and that the appreciation of the evidence by the trial Judge is perverse and hence would reverse the findings of the trial Court thereby allowing the appeal, resulting in the plaintiff coming forward to file the above second appeal on grounds brought forth in the grounds of appeal for the determination of the sole substantial question of law 'whether the judgment of the lower appellate Court is vitiated by its failure to apply the correct principles of law?'

20. Either from the evidence or in appreciation of the legality on the subject particularly on its arguments held on the plea of adverse possession, the lower appellate Court has proved to the effect that it has only applied the correct principles of law, so far as the legality involved in the case is concerned besides properly appreciating the evidence on reasons assigned, framing proper points for consideration and with due opportunity for both parties to be heard and therefore neither could it be held that the lower appellate Court has not properly appreciated the evidence nor could the application of the principles of law be held improper. Therefore, the only conclusion that this Court could arrive at on the sole substantial question of law framed for determination of the above second appeal is to hold that the lower appellate Court has only done its duty in the

proper manner and in the right direction particularly in application of the correct principles of law and hence deciding the substantial question in favour of the respondent and against the appellant, this Court has to decline to cause any interference into the well considered and merited judgment of the lower appellate Court in setting aside the judgment and decree of the trial Court and hence the following judgment:

In result,
(i)the above second appeal does not merit acceptance and the same is dismissed.
(ii)The judgment and decree dated 30.9.1991 rendered in A.S.No.51 of 1990 by the Court of Additional District Judge, Cuddalore, thereby reversing the judgment and decree dated 14.9.1989 rendered in O.S.No.71 of 1984 by the Court of the Principal Subordinate Judge, Cuddalore is hereby confirmed.

Consequently, C.M.P.No.16813 of 1991 is also dismissed.
However, in the circumstances of the case, there shall be no order as to costs.

Index: Yes
Internet: Yes
sr/Rao

To

1.The Additional District Judge,
Cuddalore.

2.The Principal Subordinate Judge,
Cuddalore.

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